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CLEARINGHOUSE RULE 97-066

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. The analysis of Clearinghouse Rule 97-066 does not conform to the Manual. As stated in s. 1.02 (2) (b), Manual: “The purpose of the analysis is to provide an understandable and objective description of the effect of the rule. The analysis . . . should contain sufficient detail to enable the reader to understand the content of the rule and the changes made, if any, in existing rules.” Although the analysis to Clearinghouse Rule 97-066 describes some of the changes made by the rule revision, it fails to mention others. The most notable omission is the failure of the analysis to discuss the repeal in SECTIONS 38 and 39 of s. DOC 309.55 (5) and (6), which contain comprehensive rules relating to the work assignment pay plan and program assignment pay plan, respectively.

b. The SECTIONS of Clearinghouse Rule 97-066 need to be reordered so that the first provision mentioned in each treatment clause is in numerical order with the first provision mentioned in all of the other treatment clauses. For example, the treatment of s. DOC 309.30 (5) by SECTION 9 should precede the treatment of s. DOC 309.466. [s. 1.04 (1), Manual.] The entire rule should be reviewed for instances of this error.

c. Sections DOC 309.49 and 309.51 (2) (b) are repealed and recreated and s. DOC 309.51 (2) (a) is renumbered and recreated. All these provisions could have been amended. The amendment approach would have made it easier for an interested person to understand the substantive difference between the current section and a revised section. Also, it is not appropriate drafting style to renumber a provision of a rule through repealing and recreating it. If the department chooses not to use renumbering and amending, the appropriate drafting style is

to repeal the current rule and create the proposed rule. Further, the introductory clause to Clearinghouse Rule 97-066 incorrectly shows s. DOC 309.51 (2) (a) as renumbered and amended rather than renumbered and recreated.

d. Numerous sections of Clearinghouse Rule 97-066 that renumber current rules use a number that is currently occupied by an existing rule and it is not apparent from the rule revision what happens to the existing rule.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. SECTION 2 renumbers and amends s. DOC 309.28 and the new language refers to “[a]ll money legally obtained and not excluded by statute” rather than the current phrase “[a]ll money in any form.” It is not clear what procedure is used to determine money that is “legally obtained” and who is responsible for determining this.

b. Section DOC 309.30 (5), which is created in SECTION 9, refers to “release account” and “the excess.” Clarity could be added to these terms if they were modified by the term “funds.”

c. Section DOC 309.36 (3), which is created in SECTION 27, uses the term “legal loan.” This term is unclear and could refer to a loan obtained from a legitimate financial institution, a loan approved by a specified department official or a loan obtained for legal services. Additional clarification is needed.

d. In s. DOC 309.36 (2) (c), “statute” is misspelled.

e. In SECTION 35, a definition of “work assignment” is created in s. DOC 309.02 (16). Clarity of Clearinghouse Rule 97-066 would be increased by the creation of a comparable definition of “program assignment,” which is a term used in various provisions of ch. DOC 309, often in conjunction with the term “work assignment.” [See, for example, SECTION 36.]

f. The introduction to s. DOC 309.38 (4), which is renumbered from s. DOC 309.55 (4) in SECTION 37, is amended by the addition of the phrase “the following applies.” The addition of this phrase is grammatically incorrect. It is suggested that “does any of the following” replace the phrase. In s. DOC 309.38 (3) (a) (intro.), “is one of the following” should replace “are” in the current rule; the provision shown in SECTION 40 does not accurately reflect the current rule.